

Remarks:

Claims 2, 5-10, 14-16, and 27-32 are currently pending in the application. By the present amendment, claims 28 and 29 are cancelled without prejudice. No new matter is added.

Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

Rejections Under 35 U.S.C. §103

Claims 2, 5-6, 9-10, 16, and 27 stand rejected under 35 USC 103(a) as being unpatentable over Milocco (European Patent Application Publication No. 0545127) in view of Marcussen (U.S. 3,890,987). The rejection is respectfully traversed.

Milocco discloses a door 3 comprising a water supply circuit. The water supply circuit includes a water softener 7, a metering reservoir 8, and a salt container 9 for treating water to be supplied to a tub 2. (Col. 3, ll. 2-9). The water supply circuit is connected to a feeding conduit 10 for receiving a supply of water and also to an outlet conduit 16 for supplying softened water to the tub 2. (Col. 3, ll. 10-13, 23-27). Portions of the conduits 10 and 16 housed in the door 3 are connected with portions of the conduits 10 and 16 housed in the rest of the casing 1 via break-away coupling means 17 and 18, respectively, which disconnect when the door 3 is opened. (Col. 3, ll. 28-35). Milocco does not disclose an extendable conduit. Milocco also fails to disclose a wash aid dispenser, and, inherently, a liquid delivery system for delivering liquid to a wash aid dispenser.

Marcussen discloses a dishwasher having an auxiliary washing liquid delivery means that includes a conduit 39 extending into a lower chamber 41 of a well 35 to the dishwasher door. Slugs of water and steam percolate through the conduit 39 to a second conduit 44 and through a discharge element 46 downward toward the silverware basket 22. (Col. 4, ll. 15-17 and 22-31 and Fig. 4). Carried on the door is a detergent dispenser 23 and a rinsing additive dispenser 24, each of which is separate and independent of the conduit 39, 44 and the discharge element 46. (Col. 3, ll. 38-39 and Fig. 4). The conduit 39 supplies water to the silverware basket 22, but not to the detergent dispenser 23.

The rejection fails for at least two reasons to meet the *prima facie* requirements for a proper rejection. To establish a *prima facie* case of obviousness, under *Graham v. John Deere*, 383 U.S. 1 (1966), several factual inquiries must be addressed. These include, at a minimum, (1)

determining the scope and content of the prior art; (2) ascertaining the difference between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. This analysis must be factual and objective.

“Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill. ...Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. ... [T]he analysis supporting a rejection under 35 U.S.C. §103 should be made explicit. ...[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” 72 Fed. Reg. 57526, 57528-57529 (2007).

First, the Office Action fails to resolve the level of ordinary skill in the pertinent art. There is no factual, objective analysis of the level of ordinary skill in the pertinent art to be found anywhere in the Office Action. Indeed, the Examiner fails to address the level of ordinary skill at all. Thus, this requirement under *Graham, supra*, has not been met. On this basis alone, the rejection cannot be sustained.

Second, the Office Action also fails to properly construe the prior art because the rejection is based on a mischaracterization or misinterpretation of the references. The Examiner asserts in paragraph 3 of the office action that “The door comprises various wash aid dispensers 7, 8, and 9.” However, this is a complete mischaracterization of these elements. A simple reading of Milocco makes clear that element identified with the numeral 7 is a water softener; the element identified with the numeral 8 is a metering reservoir; and the element identified with the numeral 9 is a salt container. Elements 7, 8, and 9 of Milocco function together to perform a water softening function. These elements are not a wash aid dispenser as asserted by the Examiner. Anyone of ordinary skill in the dishwashing art will be quick to state that a water softener is not a wash aid dispenser. The salt is the water softener is not a wash aid that is dispensed by a wash aid dispenser. The Examiner’s characterization of the water softener elements 7, 8, and 9 of Milocco as a wash aid dispenser is an error and contrary to the express description of Milocco.

In addition, the Examiner has also mischaracterized Marcussen as inherently teaching an extendable conduit. At no point does Marcussen suggest that either conduit 39, 44 is extendable. A detailed reading of Marcussen does not reveal any disclosure regarding the conduit 39, 44 being extendable. Nor is there any reason for the conduits 39, 44 to be extendable. Had there been a need for the conduit to be extendable, then Marcussen would have so mentioned. Milocco teaches the state of the art prior to Applicants' invention. Milocco states, with reference to a prior design, that flexible conduits were known, but failed after repeated use, which is why Milocco opted for the quick disconnect fittings. As the two known methods of flexible hose and quick disconnects do not disclose an extendable hose to address the problem, one of ordinary skill in the art would look to these known methods in the case where Marcussen is silent on how it might be achieved. There would be no reason to imply anything further than what was already known, unless the Examiner is applying hindsight reconstruction. Therefore, it is not inherent that Marcussen would teach an extendable conduit.

The Examiner's understanding of the doctrine of inherency is inconsistent with the MPEP and the controlling case law. The MPEP section 2112 discusses the requirements of every rejection based on inherency and the burden of proof. As set forth in this section, the express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. § 102 or 103. "The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness," citing *In re Napier*, 55 F.3d 610, 613, 34 USPQ 2d 1782, 1784 (Fed.Cir 1995). In all cases the Examiner must provide a rationale or evidence tending to show inherency. "The fact that a certain result or characteristics *may occur* or be present the prior art is *not sufficient* to establish the inherency of that result or characteristics. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed.Cir 1993)" MPEP § 2122.04 (emphasis added). Further, to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Id.*, citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ 2d 1949, 1950-1951 (Fed.Cir 1999) (emphasis added).

The Examiner's claim of inherency fails to meet the applicable rules. The Examiner states that he "feels that in order for the device of Marcussen to work properly, it *must* be, and is

therefore inherently extendable.” (*Office Action*, p. 3). The Examiner’s feeling that it must be is not the rationale or supporting evidence as required by the rules as summarized in MPEP 2112. Basing a determination of inherency on a feeling is wholly insufficient. The Examiner has provided neither basis in fact nor any technical reason to reasonably support the determination that the alleged inherent characteristic *necessarily* flows from the teaching of the prior art. *Ex parte Levy*, 117 USPQ 2d 1461, 1464 (Board of Patent Appeals and Interferences 1990). Such a determination would require the Examiner to provide clear evidence that the conduit of Marcussen is *necessarily* extendable, and the Examiner fails to do so. Nothing in Marcussen suggests making the conduit extendable, and there are other probable and possible means of constructing the conduit of Marcussen such that it functions properly. For example, Marcussen could have implemented break-away coupling means as taught by Milocco in order to accommodate the opening and closing of the door. Thus, it is not *necessary* that the conduit of Marcussen is extendable. As inherency may not be established by a mere possibility, the concept of an extendable conduit is not inherently taught by Marcussen.

For these reasons, the rejection fails to meet the standards of a *prima facie* rejection and must fail on its face.

Assuming, *arguendo*, that the rejection meets the *prima facie* requirements, the rejection fails because the combination is improper and the combination of Milocco and Marcussen is traversed. As previously stated in the *prima facie* arguments, the Milocco and Marcussen references are improperly construed. Therefore, the resulting combination is flawed in that it is based on a mischaracterization of the references. When Milocco and Marcussen are properly construed, the Examiner’s basis for the combination (Milocco having a wash aid dispenser supplied water through the door and Marcussen having an extendable conduit) disappears as neither reference discloses the subject matter for which the Examiner cites them for. Therefore, it is impossible for the combination to survive as the combination is based on an erroneous characterization of both references.

Assuming, *arguendo*, that the combination of Milocco in view of Marcussen is tenable, the combination still does not reach the invention of claim 27. As previously stated, Milocco does not disclose a wash aid dispenser that is supplied water through the door and Marcussen does not disclose an extendable conduit supplying water to a wash aid dispenser. Thus, the resulting combination of Milocco and Marcussen would be a dishwasher having a water supply

circuit comprising a water softener located in the door and which is supplied water from the cabinet through the door via quick disconnect couplings in combination with a water conduit supplying percolating water to the silverware basket via a conduit, with quick disconnect couplings or made of flexible material, extending from the sump to the door above the silverware basket.

Claim 27 calls for, in pertinent part, a dishwasher to comprise a liquid delivery system for delivering liquid to a wash aid dispenser provided on the door. The liquid delivery system comprises a continuous liquid conduit coupling at least one of an external liquid supply and the wash chamber to the wash aid dispenser when the door is in both the closed and opened positions. Further, the conduit includes an extendable portion to accommodate any changes in the hose length needed to move the door between the closed and opened positions.

The combination does not reach claim 27 because the combination does not teach or suggest the liquid delivery system having a continuous conduit with an extendable portion to accommodate any changes in the hose length to move the door between the closed and opened positions. The combination teaches either quick disconnect couplings or a flexible conduit to address the problem of opening and closing the door when the conduit runs through the door. Neither of these approaches require that the conduit have an extendable portion. In fact, they teach against it. The quick disconnect couplings merely disconnect when the door is moved to prevent the conduit from flexing. The flexible conduit merely collapses or folds over on itself to accommodate the opening and closing of the door.

A person of ordinary skill in the art would not conclude that the invention of claim 27 would have been an obvious variation of Milocco in view of Marcussen. A conduit with an extendable portion to accommodate the opening and closing of the door would not be obvious to one of ordinary skill in the art who already knew of quick disconnect couplings and flexible conduits for solving the problem. It follows that claim 27 is non-obvious and therefore patentable over the combination of Milocco and Marcussen. Applicants respectfully request withdrawal of the rejection.

Claims 2, 5-6, 9-10, and 16 depend, directly or indirectly, from claim 27 and are therefore non-obvious and patentable at least for the same reasons as claim 27.

Claim 5 is independent patentable over the combination of Milocco and Marcussen, as claim 5 calls for a third hose portion of claim 2 to be extendable. As the combination of Milocco

and Marcussen fails to teach an extendable third hose portion, much less any extendable hose portion whatsoever, claim 5 is independently patentable over the combination of Milocco and Marcussen.

Claims 7-8 and 14-15 stand rejected under 35 USC 103(a) as being unpatentable over Milocco in view of Marcussen and further in view of Lim (U.S. 5,331,986). The rejection is respectfully traversed.

As claims 7-8 and 14-15 depend directly or indirectly from claim 27, the rejection will be addressed with respect to claim 27. The rejection based on the combination of Milocco, Marcussen and Lim fails for the same reasons as previously stated for the underlying combination of Milocco and Marcussen because the addition of Lim does not address the identified shortcomings of the underlying combination.

More specifically, Lim does not teach or suggest a liquid delivery system for delivering liquid from at least one of an external supply and the wash chamber to the wash aid dispenser comprising a continuous liquid conduit including an extendable portion. Lim simply teaches a multiple outlet valve 60 for distributing water in a dishwasher. At no point does Lim teach or suggest the claimed liquid delivery system. A person of ordinary skill in the art would not conclude that the invention of claim 27 would have been an obvious modification of Milocco in view of Marcussen and further in view of Lim. As the combination of Milocco, Marcussen, and Lim does not reach the claimed invention, claim 27 is non-obvious and therefore patentable over Milocco in view of Marcussen and further in view of Lim.

Claims 28-29 stand rejected under 35 USC 103(a) as being unpatentable over Milocco in view of Lim. The rejection is respectfully traversed.

Claims 28-29 have been cancelled without prejudice, thus rendering the rejection moot. Applicants request the withdrawal of the rejection of claims 28-29.

Claims 30-32 stand rejected under 35 USC 103(a) as being unpatentable over Milocco. The rejection is respectfully traversed.

Claim 30 calls for, in pertinent part, a household dishwasher comprising a liquid delivery system for delivering liquid to the liquid-using wash accessory provided on the door. The liquid delivery system comprises a liquid conduit fluidly coupling at least one of an external liquid supply and the wash chamber to the liquid-using wash accessory, and the liquid conduit has a portion at least partially disposed within the wash chamber and forming a slide rail for a basket

slidable within the wash chamber. Because Milocco does not disclose these claims elements, claim 30 is non-obvious and therefore patentable over Milocco.

In applying Milocco to the claims, the Examiner contends that:

Milocco discloses a mating portion that forms a seal between the first two portions of the conduit when the door is closed (col. 3 lines 35-39 and figure 1). When the portions come together, an integral conduit is formed. Milocco discloses that the mating portion can be a male/female coupling type readable on fluid coupling, or a flexible watertight seal readable on a third hose portion. Thus, Milocco discloses a fluid coupling connecting two portions of a conduit when the door is closed. However, Milocco does not disclose the device being located to function as a slide rail with a basket. This is viewed as nothing more than a rearrangement of the location of the fluid conduit, and thus is a rearrangement of parts presented in the prior art. Rearrangement of parts was held to have been obvious. *In re Japikse* 86 USPQ 70 (CCPA 1955).

Office Action, p. 5.

Applicants contend that the Examiner's citation of *In re Japikse* in fact affirms patentability of claim 30, contrary to the Examiner's assertion. *In re Japikse* deals with a hydraulic power press. It was held that there would be no invention in shifting a position of a starting switch disclosed in the prior art to a different position on the hydraulic power press because ***it would result in no modification of the operation of the device***. Claim 30 does not simply call for a shift in the position of the fluid coupling of Milocco. The liquid conduit of claim 30 has a completely different structure than the fluid coupling of Milocco that provides for the additional functionality of it operating as a slide rail for a basket in addition to performing the water supplying function. The fact that the slide rail forms the conduit and performs the slide rail function in addition to the water supplying function no doubt constitutes a modification of the operation of the fluid coupling of Milocco, which operates only as a fluid connection and lacks the structure to function as a slide rail. The invention of claim 30 is by no means a rearrangement of the parts of Milocco, as the fluid coupling of Milocco lacks the parts necessary to operate as a slide rail. Applicants respectfully submit that the Examiner has relied on an erroneous and overly generalized application of *In re Japiske*. Therefore, claim 30 is non-obvious and patentable over Milocco. Applicants respectfully request withdrawal of the rejection.

Claims 31 and 32 depend, directly or indirectly, from claim 30 and are therefore non-obvious and patentable at least for the same reasons as claim 30.

Conclusion

No new matter has been added by the foregoing amendments, full support therefore being shown in the drawings and specification as filed. All claims remaining in the application are believed to now be in condition for allowance. Early notification of allowability is respectfully requested.

If there are any questions regarding this matter, please contact the undersigned attorney.

Respectfully submitted,

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